

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 4833 of 2020
Date of decision : 17.08.2023

Sh. Nand Lal Aggarwal

Address: A-43, A-5/B, SFS, Flat no-279, Gate no.8, Paschir
Vihar, New Delhi-110063.

Complainant

Versus

JMD Limited

ADDRESS: 6, Devika Tower, UGF, Nehru Place, New
Delhi-110019.

Respondent

APPEARANCE:

For Complainant:

Ms. Tanya Advocate

For Respondent:

Mr. Pankaj Chandola Advocate

HARERA
GURUGRAM
ORDER

1. This is complaint filed by Nand Lal Aggarwal(allottee) under section 31 read with section 72 of the Real Estate (Regulation and Development) Act 2016(in brief Act of 2016), against respondent viz. JMD Ltd.

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2. According to complainant, same through an authorized marketing representative, booked a commercial unit GF96 in the JMD Empire project at sector 62, Gurgaon, admeasuring 559 sq. ft. for a basic sale price of Rs.42,23,943.75 in January 2010.
3. That despite requesting, the respondent did not execute Builder Buyer Agreement (BBA). On demand of respondent, payment of Rs.4,33,225 was made by him on 24.01.2010 and Rs.14,78,380.31 in March 2010. All these demands are in violation of section 13 of the Act of 2016.
4. That BBA was executed on 05.04.2010 between both the parties. As per clause 15 of BBA, unit was supposed to be delivered within 3 years from the date of sanction of the building plan with extended period of 6 months.
5. That the issue of delayed delivery of possession of the unit has already been dealt with by the Authority in complaint no 5116/2019 filed by him through order dated 06.10.2020, wherein respondent was directed to pay the interest at the rate of 9.30%p.a for every month of delay on the amount paid by him(complainant) from the due date of possession upto the date of offer of possession. He(complainant) is entitled for DPC till offer of possession. The Authority stated that compensation is to be decided by the Adjudicating Officer.
6. That on various demands by respondent, he(complainant) paid total of Rs.47,03,523.60 till 25.11.2017, which is more than the

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basic sale price of the unit. Copy of BBA was not delivered to him (complainant) even after four years of the execution of

same.

7. That he (complainant) planned to start his business in 2013 but due to delay of possession of unit, complainant faced financial losses and loss of business.

8. That in order to elude its responsibility of delayed possession, respondent offered possession of unit vide letter dated 31.10.2017 but the unit had incomplete interiors, there was no separate electricity meter, front road was incomplete, lift was not working, there was no work on floors, ceilings and on walls as were assured by the respondent. The respondent received project completion certificate on 27.07.2018.

9. That complainant took possession of the unit in 2018 on papers, just to save his hard earned money but no physical possession of the completed unit has been given by the respondent. He (complainant) was coerced to sign Maintenance Agreement and unit was levied with holding charges and hence complainant in September 2019 paid Rs.1,18,944/- as maintenance charges including GST.

10. That till date, no conveyance deed has been executed by the respondent, which is in violation of section 11(4)(f) of the Act. At the time of booking of the unit, respondent stated that the project contains 3 Star Hotels which is the USP of the project,



but there is no hotel in the project, so respondent violated section 11(3) and section 14(2) of the project by not updating project information and by arbitrarily changing the sanctioned building plans by DTCP without taking prior consent of the allottees.

11. That respondent demanded Rs.65,144 as VAT vide email dated 11.07.2018, whereas VAT was valid till 2017. Moreover, the complainant has been charged GST @ 12% amounting to Rs.25,344 as 5% on BSP, whereas GST is a new tax that came in force in 2017, however the due date of possession was in 2013.

12. Citing all this, the complainant sought following reliefs: -

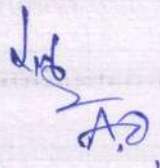
- i. To direct the respondent to provide the compensation of Rs.5,00,000/- for causing mental agony, harassment to the complainant.
- ii. To provide the compensation of Rs.2,00,000/- for the legal cost.
- iii. To compensate the complainant for financial loss due to loss of appreciation and opportunity that has occurred on account of misrepresentation on the value of the unit.
- iv. To provide compensation for harassing the complainant by not withdrawing the illegal demand towards VAT and maintenance.

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- v. To direct the respondent to provide the compensation for extracting the illegally charged GST amount without providing any input GST credit.
- vi. To direct the respondent to provide compensation for providing wrongful information to entice the complainant and for changing the sanctioned plans.
- vii. To direct the respondent to provide compensation of Rs.35,000/- for not refunding the refundable security amount as per the agreement to the complainant and refunding the same.

The respondent contested the complaint by filling a written reply. It is averred by the respondent :-

13. That only after being completely satisfied and agreed to the payment schedule, the complainant had proceeded to book a commercial unit- GF96 (Unit) in the project for a total price of Rs.42,23,943.75. The BBA was signed on 05.04.2010, by the complainant after the careful perusal of its terms and conditions.
14. That the complainant had earlier filed a complaint no. 5116 of 2019 before HARERA, Gurugram, in which the complainant sought same reliefs as prayed here in this complaint.
15. That it(respondent) had applied for Occupancy Certificate for the Project "Empire" vide Letter dt. 18.09.2015 and the Occupancy Certificate was issued on 25.07.2017. Thereafter, it(respondent)



completed the final touch up and offered the possession to the complainant on 31.10.2017.


16. That the complainant took the possession only on 01.02.2018 after a delay of approximately 4 months from the date of offer of possession. This fact has also been recorded in the order dated 16.10.2020.
17. That as per BBA dated 05.04.2010, the complainant was bound to make timely payment of dues in accordance with the demands raised by the respondent but complainant violated clause 7 along with other allottees by not making the timely payment, as per demands raised to him. All this rendered the respondent unable to handover possession as per the promised date, under the agreement.
18. That the complainant had opted for construction linked payment plan, against said commercial unit. Demands were raised only in accordance with said payment plan.
19. That Ld. Authority has also upheld that the delay was due to reasons beyond the control of the respondent. Therefore, there was no mental harassment or any losses caused to the Complainant. For the delay in handing over of possession, the Complainant has already duly been compensated by the Ld. Authority by ordering delay penalty charges. In this circumstance, the complainant is not entitled for any further compensation.
20. That the registration of the subject project was valid upto 31.12.2019 and as per the complainant's own submission, the

possession of the subject unit was offered to the complainant on 31.10.2017 i.e. well within the timeline submitted before the Ld. Authority. In this way, it(respondent) has not committed any violation or caused any deliberate delay in the execution and timely handover of the subject project.

21. In view of the above facts, respondent prayed that the present complaint is devoid of merit and ought to be rejected with heavy costs.

I heard arguments advanced by Ld. Counsels for both of the parties and went through the documents placed on record.

22. There is no denial that the complainant booked a commercial unit, GF96 in the JMD Empire project for a basic sale price of Rs.42,23,943.75 in January 2010 being developed and marketed by the respondent. BBA between both of the parties was executed on 05.04.2010. The physical possession of subject unit was handed over to complainant on 01.02.2018. Complainant filed a complaint no. 5116 in 2019, which was decided on 06.10.2020, in which the Authority found that the building plan was sanctioned on 30.03.2010 and due date of handing over the possession was 30.10.2013. The possession was offered to the complainant on 31.10.2017 i.e. after delay of 4 years 1 month and 1day. Relying upon these factors, Learned Authority granted DPC @ 9.30% p.a. w.e.f. from due date of


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possession i.e. 30.10.2013 upto the actual date of offer of possession i.e. 31.10.2017.

23. Admittedly, the Authority did not allow compensation and left it to be decided by the Adjudication Officer. Considering all this, jurisdiction lies with the Adjudicating Officer, irrespective of the fact that a complaint on similar facts has also been decided by the Authority. The Act of 2016 has bestowed powers to allow DPC to the Authority, while Adjudicating Officer has been authorised to decide amount of compensation in view of sections 12,14,18 &19 of the Act of 2016.

24. So far as prayer of complainant for compensation for financial loss, loss of appreciation and opportunity is concerned, as mentioned earlier on a separate complaint filed by present complainant, the Authority allowed Delay Possession Charges(DPC) @ 9.30% p.a. for every month of delay on amount paid by the complainant from due date of possession i.e. 20.09.2013 upto date of offer of possession i.e. 31.10.2017. When complainant has already been allowed DPC, same is not entitled for compensation for financial loss or loss of appreciation and opportunity. It is well settled that, amount of DPC is same as the compensation.

25. May I refer here a case, decided by UP ^{Real Estate Appellate} RERA Tribunal, titled as, Suman Lata Pandey vs Ansal Properties & Infrastructure Ltd. Appeal no. 56/2020 reported in 2022 SCC Online RERA (UP)



123. The Tribunal, referred a judgement decided by Bombay High Court, in case titled as, Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India, where it was held that, "Section 18(1)(b) lays down that if the promoter fails to complete or is unable to give possession of an apartment due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act or any other reason, he is liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice in this behalf including compensation. If the allottee does not intend to withdraw from the project he shall be paid by the promoter interest for every month of delay, till the handing over of the possession. The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment is handed over to him is not unreasonable. The interest is merely compensation for use of money." Section 18(1)(b) of the Act of 2016, lays down that, If promoter fails to complete or is unable to give possession of apartment....., if the allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

26. On the basis of all this, complainant is not entitle for compensation on the ground of financial loss or loss of appreciation and opportunity.



27. As observed by the Authority in complaint no. 5116/2019, referred above, the respondent offered possession of subject unit after delay of 4 years 1 month and 1 day, apparently, the complainant/ allottee suffered mental agony and harassment. Same has claimed a compensation of Rs.5,00,000/- in this regard. Keeping in view the fact that, respondent failed to deliver the possession, despite taking payment of Rs.47,03,523.60/-, which is more than total sale consideration of Rs.44,27,978.75/-. The complainant is allowed a sum of Rs.2,00,000/- for mental agony and harassment in this regard.
28. The complainant has sought compensation of Rs.2,00,000/- for legal costs. No certificate of fee of advocate is put on record. Even then, it is apparent that complainant was represented by a lawyer, during proceedings of this case, same is allowed a sum of Rs.50,000/- as cost of litigation.
29. The complainant has prayed for compensation against the respondent for not withdrawing illegal demands of VAT and maintenance and again for illegally charging GST without providing any inputs GST credit. All these reliefs were prayed by the complainant in his earlier complaints i.e 5116/2019 filed before the Authority and the Authority has already given findings in this regard. No reason to allow same reliefs again. Request in this regard is declined.

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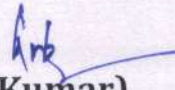
30. The complainant has requested for compensation against the respondent for providing wrong information to entice him i.e. complainant and for changing sanctioned plan. Complainant did not adduce any evidence in this regard and hence failed to prove this plea.

31. Similarly, the complainant has prayed a compensation for Rs.35,000/- against the respondent for not refunding refundable security. There is no evidence on record to verify that any such refundable security was demanded by respondent or paid by the complainant. Prayer in this regard is also declined.

32. Complaint is thus disposed off. Respondent is directed to pay amounts of compensation within 30 days of this order, otherwise same will be liable to pay interest @10.5% p.a. till the date of realisation of amount.

33. Announce in open court today.

34. File be consigned to the Registry.



(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram